

Birds and the Law

Ignorance won't save you or your bird if you unknowingly break these animal-specific laws.

By Rebecca Sweat

Before moving into his new apartment, Michael Hull didn't pay much attention to the "no pets" clause in the lease. He figured that meant no dogs or cats, and thought that he could get away with having Gilligan, his African grey parrot. But two weeks after moving in, Hull discovered that "no pets" meant no pets of any kind. One of his neighbors saw Gilligan in Hull's living room window, and promptly reported the bird to the landlord. Hull was given an ultimatum: either get rid of the bird or move out. "I couldn't imagine not having Gilligan around," Hull said, "so I felt I had no choice but to pack up my things and go through the hassle of finding another place to live."

Erin Jablonski lived in a condominium with her blue-fronted Amazon parrot, Pepe, for five years without any problems. Then last year, when someone new moved into the unit above her, the homefront suddenly became a battlefield. The woman now living upstairs seemed to have no tolerance for noise whatsoever. "If Pepe just vocalizes for a couple minutes in the evening, this woman will start banging on the floor with her broom," Jablonski related. "There's no reasoning with her. Several times when Pepe's made a little noise she's called the police or Animal Control and they've come out to my place and every time they've sided with me. Now she's filed a complaint against me with the condo association. With her, there's something to deal with all the time."

Probably more than a few parrot owners have been confronted with "no pet" clauses or neighbors who dislike bird noises. Often when these types of situations arise, the parties involved consult with an animal lawyer — an attorney who specializes in lawsuits concerning companion animals. In addition to evictions and disputes between neighbors, animal lawyers may also be involved in cases where a parrot bites and injures someone, in the establishment of pet trusts for the care of companion parrots after their owner's death, and even in custody battles when pet owners divorce.

There are probably a hundred or more attorneys in the United States who work on animal law cases or pet-related lawsuits at least part of their time. The majority of these lawyers are involved with cases involving dogs or horses. A small number of attorneys also get involved in legal cases involving pet birds.

The majority of the laws affecting companion animals are enacted and enforced by cities and counties, rather than state or federal governments — which means what's legal regarding pet birds is going to vary from community to community. Still, there are many similarities in local laws regarding what's OK and what isn't when it comes to pets.

Here are some common bird-related questions asked of animal lawyers and how they typically counsel their clients:

Can I be sued if my parrot bites someone?

"Under our system of law, anyone can sue anyone else," said Carmen Rowe, JD, an attorney in Tacoma, Washington, with a special interest in animal law. If your parrot injures a person, the aggrieved person can file a lawsuit and take you to court. If you lose the case, you may be required to pay the injured victim reimbursement for medical bills, pain and suffering, and even punitive damages. More often than not, though, these types of lawsuits don't "stick," according to Rowe.

"People know that parrots bite," she said. "Most people know that parrots are not domesticated like a dog or cat is, and so biting is almost to be expected. A lot of times when people are bitten by someone else's parrot, it's the injured person's own fault. They should have known there was a good chance they'd get bitten if they messed around with the parrot."

The person may have went into the bird room on his own — uninvited and without permission, carelessly stuck his hand in the cage, or was provoking the parrot in some way. If that's the case, no judge is probably not going to hold the bird owner responsible, Rowe said.

Normally, a judge would only hold the bird owner liable if the parrot has had a history of aggressively attacking people — beyond normal nipping — and the pet owner didn't do anything to contain the bird or protect the visitor.

When my pet bird dies, is it legal to bury him in my backyard?

Most municipalities prohibit the burial of animals within city limits. "That's mainly for public health reasons, especially as it pertains to contamination of the water supply," said Charlotte Lacroix, DVM, JD, sole proprietor of Priority Veterinary

Legal Consulting based in Whitehouse Station, New Jersey. It's best to have your parrot buried in a pet cemetery, she said. Most large cities have at least one pet cemetery, and many of these cemeteries do accept birds.

I travel a lot and would like to bring my parrot with me when I go. How big of an issue is the interstate and international transport of pet birds?

Of the two, interstate travel is by far a lot less complicated. Usually the only time you might run into trouble is if you are transporting a quaker parrot and passing through a state where the bird is prohibited, or if the state you are driving through has issued a quarantine (such as much of the Southwestern United States was last year when it had an outbreak of Exotic Newcastle's Disease) and then you may not be able to enter the state's borders with your bird.

Before leaving on an interstate driving trip, Brosell recommends you contact the state veterinarians for the states you will be visiting, to see if there are any restrictions for people traveling through with pet birds. Most likely all that you will need is an interstate veterinary health certificate (you can get this from any licensed veterinarian, who will need to examine your bird no more than 10 days before your departure). It's important to have this. Some states do have border checks on the highway between states and may request to see such documentation for any animals in your vehicle.

International travel with an exotic pet bird is more of a challenge. It requires taking many steps to ensure that all is done on the "export" side (the country you are leaving) and equal amounts of preparations on the "import" side—where you are taking the exotic animal.

If you are planning on leaving the U. S. with your parrot, you will need to get a CITES permit before you go. CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between nations, prohibiting the import of certain species of wild animals and plants, in an effort to protect these species in their natural habitats. All members of the Order Psittaciformes, with the exception of the budgerigar and the cockatiel, are listed in this agreement. Pet psittacines can still be transported from one country to another with a CITES permit. In the U. S., these are issued by the Office of Management Authority of the U.S. Fish and Wildlife Service (USFWS).

"It does take some time though to get the CITES permit, so you should start working on getting your permit about a year before your trip," Rowe said. You can get an application for a permit online at www.international.fws.gov (click on "permits"). The permit will need to be validated by a USFWS wildlife inspector before you leave the U.S. You will need to take a copy of your validated permit with you on your trip, and present it when you re-enter the U.S. with your pet.

You will also need to contact the country(ies) you plan to visit and find out what their requirements are for entry with an exotic pet bird. "A lot of times they're consistent with CITES, but not always," Rowe said. "You have to abide by CITES, but there may also be individual specific local requirements of the country you're visiting."

The Office of Management Authority can provide you with the contact address, phone or fax number for the CITES permit offices in other countries. At a minimum a re-export certificate from the country(ies) visited will be required, and your bird will need to be examined by a veterinarian in that country. In some cases, your bird may need to go through quarantine in the country you're visiting — but that's usually only if you're staying there for an extended period of time.

Is there a limit on how many parrots a person can own?

Most cities have zoning laws, which limit the number of dogs and cats a person can own, but rarely do municipalities put a limit on the number of indoor pet birds in a household. There are, however, usually local ordinances pertaining to outdoor bird breeding. These ordinances may state the maximum size of the aviary structure, the number of birds that can be kept, and whether or not outdoor aviaries are even allowed.

"Even if you're just thinking of getting into bird breeding as a hobby, I recommend checking into your local zoning laws," urged Linda Brosell, JD, an attorney in Seattle, Washington, and president of the NorthWest Exotic Bird Society. "You don't want to make a huge investment to build your enclosures and increase your flock to find out that you will have to move." She said there have been cases where neighbors have forced the owners of aviaries out of certain areas, by claiming the birds were a nuisance due to the smells or noise.

In addition to zoning laws established by local municipalities, most subdivisions, condominium complexes and townhome associations have their own set of rules and regulations as well. "Typically homeowner's associations will put the limit at somewhere between two and five common household pets per household," noted Bruce Winter, Winter, JD, LLM, CPA, an attorney and parrot owner in Boca Raton, Florida. "This does leave some room for interpretation, because what exactly is a common household pet? Certainly a dog and cat would fall under this category, and so would a budgie and a cockatiel. But a green-winged macaw and a chattering lory would probably not." It's these gray areas that can sometimes give parrot owners the most trouble, he added. That's because while there may not be any rules in your homeowners' association

prohibiting the ownership of a truly exotic parrot, there may not be any rules saying it's okay either.

I own a quaker parrot and am moving to a state in which these birds are illegal. Does that mean I can't bring my bird with me?

If you bring your parrot with you to live in a state where quaker parrots have been banned and you are caught with it, "the authorities could possibly euthanize it, they could fine you, or they could do both," said Brosell. Exactly what the authorities would do depends on the laws of the state, but at the very least, your bird will be confiscated, Brosell said.

Quaker parrots are illegal to own or to sell in California, Georgia, Kansas, Kentucky, Hawaii, New Jersey, Pennsylvania, Tennessee and Wyoming. In Connecticut, quakers are legal to own, but you can't sell or breed them. New York and Virginia residents are allowed to own quakers, but they must register with the state.

The reason so many states prohibit people from owning quakers is because "the birds have been deemed as agricultural pests and those states don't want pet quakers coming into their borders, possibly getting loose, banding together and threatening the native species in the local environments," Brosell explained.

What if you're moving across country with a quaker parrot to a state that allows the birds, but you've got to pass through some states along the way that prohibit quakers? "Some states may allow an 'outlawed parrot' to be transported through the state as long as it remains in transit and is out of the state within a short time frame — something like 48 hours. Other states prohibit any entrance of the parrots they feel can create a nuisance and travelers must circumnavigate the state if they are traveling with the suspect parrots," Brosell said.

Research ahead of time what states are and aren't "safe" to pass through with your quaker (contact the state veterinarian for each state on your planned route to find out what their policies are regarding quaker parrots), so that you will know if you need to make a detour to another state along the way. To locate a particular state veterinarian office, call 1-800-545-USDA and press option "2," or visit the USDA Web site at www.aphis.usda.gov, and click on the appropriate state.

I have a parrot even though my lease says "no pets." Could I be evicted?

"Yes," said Jennifer Melton, JD, an animal rights attorney in Golden, Colorado, and legal counsel for Rocky Mountain Animal Defense. "The lease is a legally-binding contract. If your lease says there are to be no pets and your landlord discovers you have a parrot, you may either be fined or evicted." She adds that eviction is a process that in many states can take up to a month or more, so your landlord can't just walk into your apartment, see your bird, and evict you the same day.

Under certain circumstances, you may be able to get an attorney and fight being evicted. One way tenants sometimes defend their case is to point out that the landlord knew about the pet for a certain period of time, without enforcing the "no pets" clause, said Darryl Vernon, JD, a New York City attorney who does a lot of work in animal law. "In New York, for example, we have the 'Three month rule,' which basically says if you had a pet for at least three months and the landlord is aware of it, then anything in the lease prohibiting pets is unenforceable at that point."

There may also be cases where a lease does indeed say "no pets," but the landlord is primarily thinking of dogs and cats and will make an exception for pet birds — especially a small bird such as a cockatiel, budgie, canary or finch. But, don't just assume birds are an exception.

"Most of the time when the lease says 'no pets,' the landlord means no animals of any kind," Rowe said. Talk to the landlord and find out if there are any exceptions to the "no pets" rule. If the landlord does say birds are okay, find out what species are acceptable (the landlord may agree to a conure or a cockatiel but not to a cockatoo or a macaw) and get the landlord's ok in writing. Keep in mind that this ok is probably going to be conditional. "If your parrot starts screaming all the time and the other residents of the apartment complex complain about the noise, the landlord will have no choice but to tell you to get rid of the parrot or move out," Rowe said.

What recourse do I have if my veterinarian injures my parrot?

If you believe your vet injured or killed your pet, you have the legal right to file a veterinary malpractice suit against him. Such lawsuits, however, are rarely practical. "Legally, your bird is considered personal property, so if it cost you \$200 and it's been destroyed, many courts will only grant you \$200," Vernon said. After you factor in attorney fees and other costs of a lawsuit, the amount required to go to court will far outweigh that \$200 you may eventually recover.

Your best bet is to try to settle the matter outside the courtroom. "Many veterinarians carry malpractice insurance, and a pet owner may well be able to reach a settlement with the insurance company without going to court," Vernon said.

Can my vet hold my bird as “collateral” until I pay the bill?

New York, Florida, Michigan and Minnesota have lien laws that allow veterinarians to retain custody of an animal until bill is paid. “That does not mean, however, that the veterinary clinic can hold the pet forever, take it to the pound or have it euthanized,” Vernon said. “Eventually they are going to get tired of holding the animal because it’s an expense to them, and at that point, they have to offer the pet back to the owner.”

I recently visited a pet store and noticed the birds there were housed in cramped, dirty cages, with little or no toys. I’m concerned that these animals are being mistreated. What can I do?

Your first step should be to politely bring up the matter with the pet store manager. Tell him your concerns in a non-confrontational way, and try to educate him (without sounding condescending) about how pet birds should be housed. If that doesn’t get you anywhere, contact an animal law enforcement organization in your area such as the Humane Society, Animal Control or your local police department. One of these agencies will then handle the situation from there.

If there are specific cruelty laws that have been broken (this varies from city to city) the pet store owner may be prosecuted. If the particular form of mistreatment you’ve observed in this store hasn’t been codified as law in your area, the local agency can still come in and try to educate the pet store staff about proper animal care.

My local pet store sells unweaned baby parrots. Is this legal?

Only one state — California — has passed legislation making it illegal for pet stores and vendors at bird marts and swap meets to sell unweaned baby birds. This law (CA Bill AB202) will take effect Sept. 1, 2004. In all other states, it is still legal to buy unweaned baby birds from pet stores. Also, it will be still continue to be legal in California to buy unweaned baby birds directly from bird breeders.

My spouse and I are divorcing. What happens if we both want our parrot?

Legally, pets are considered personal property, and in a divorce, they’re going to be disputed over like any other piece of property — the house, the sofa, the silverware, the car, etc. “If the man and woman can’t come to an agreement on their own about who gets to keep what, the case will go in front of a judge or mediator,” Brosell said. “If the couple is fighting over pets, the judge may designate an impartial third person who will review the situation and decide which of the couple’s animals are more bonded with the husband and thus should go to him, and which pets should stay with the wife.”

If the couple only has one parrot that they’re fighting over, the judge will decide which party should get the pet. The other person will get the fair market value of the animal.

Can I leave an inheritance to my parrot?

Under the laws of all 50 states, a pet owner cannot leave any part of his or her estate outright to an animal. “Animals cannot be direct beneficiaries of trusts because legally pets are considered to be personal property, and property cannot own property,” Lacroix said.

It’s possible, however, to leave money in a trust fund for the purpose of paying for your bird’s food, housing, equipment, toys and veterinary expenses. This would require you to designate a person who would be the trustee and hold onto the money, and a second person who would be the beneficiary and caretaker of your pet. The trustee would then give the beneficiary a monthly check to pay for or reimburse bird care expenses.

You can sock money away in a “living trust” for your pet while you are still alive, or the money the money can come from proceeds of your estate (personal and real property) after your death and the will is probated or the estate is administered to closure. Either way, Winter said, “it’s good to put your wishes down in writing — in a legal document — now, while you are healthy and no one’s questioning your sanity. Otherwise, if you wait to do this when you’re on your deathbed, you could have disputes between heirs or prospective heirs as to why money should be set aside for the care of a parrot to the exclusion of your children, grandchildren and other relatives.”

Aren’t some states considering switching their laws from looking at pets as property to looking at pet owners as custodians? What are the pros and cons of this?

The cities of Boulder, Colorado; San Francisco, Berkeley, and West Hollywood, California; and the state of Rhode Island have passed ordinances in the last two years, reclassifying people with pets as “guardians” rather than “pet owners.” The idea is to get away from seeing pets as possessions, in hopes that it will motivate people to treat their animals more humanely.

“It is assumed that a custodian must give a higher standard of care than an owner must,” Brosell said. “With the legislation that has passed in state and local jurisdictions, it is apparent that this ‘duty’ is being applied regardless of the status of ‘Custodian’ or ‘Owner.’ I believe that the approach of having a ‘Custodian Status’ is ‘fashionable’ or ‘different’ — rather

than a true epiphany in animal rights.”

What concerns Rowe about this type of legislation is that once you designate an animal as a “companion” and the human as the “guardian” instead of an owner, there’s a lot more room for interference with your rights to keep exotic birds. “A lot of pet people, when they hear about this kind of legislation, support it because they know their pets aren’t just property. But a lot of the legislation that’s being proposed is being backed by some animal rights organizations who really do not want people to own exotic birds,” she said. For example, “some people think confining a parrot to a cage is cruel and if these groups say that you’re being an unfit guardian, then they would have the power to take your bird away,” Rowe said. “But if the parrot is classified as personal property, under the normal animal welfare laws they wouldn’t be able to do that unless you’re actually not feeding or abusing the animal in some way.” She believes this type of legislation could actually end up negatively impacting people’s ability to keep parrots, and for that reason, she believes the risks outweigh the potential benefits.

Do I have to “listen” to my neighbors’ complaints if they believe my parrot vocalizes too much?
Your neighbors have a right to enjoy their property. If your parrot screams all day while you are away at work, for long periods of time early in the morning, or late at night when your neighbors are trying to sleep — and it’s to the point that the squawking interferes with your neighbors’ enjoyment of their property — legally that is considered to be a nuisance.

Usually these cases start out with the neighbor either knocking on your front door or calling you on the phone and complaining about your bird’s noise. If and when that happens, the most important thing you can do is talk to your neighbor and try to work things out peacefully. See if you can come up with a solution together. One idea may be to relocate the parrot’s cage to the other end of your apartment or house, away from that neighbor. Or, you may be able to install double-paned windows or pad your walls and ceilings or floors with soundproofing material. “Usually if your neighbors just know you are trying to make the situation better for them, that’s enough to get them to stop complaining,” Lacroix said.

It’s important that you make the effort to work things out with your neighbors. Otherwise, they may start calling the Police or Animal Control when your parrot vocalizes, and you could be fined. If your parrot becomes a big enough problem, they could confiscate it or have it destroyed.

Sometimes though, you may find yourself in a situation similar to what Erin Jablonski, the woman mentioned in the beginning of this article, is having to deal with. You may live next door to someone who just seems to have it in for you. Under those circumstances, you may want to consider using a third party.

“Many counties have mediation services for neighbors involved in animal disputes,” Melton said. “They might be able to give you some constructive solutions and bring a dispassionate voice to the situation.”

When it comes to animal law, don’t wait to find out the hard way — through evictions, fines, impoundments or lawsuits — what is legal in your community. Take the initiative to find out what the pet laws are for your city; often all it takes is a trip down to your public library or city attorney’s office to look at the ordinances in the books. If you’ve got serious legal concern relating to your parrot, you might want to consult with an attorney who practices animal law (for referral, call your state bar association). Whether you are a pet owner or just live next door to a raucous parrot, you’ll be better off if you know your legal rights and responsibilities.